



## Session 6

# Freedom of establishment & freedom to provide and receive services

**We are not all workers in the internal market.  
What other economic activities are we pursuing?**

# Outline

- Freedom of establishment.
- Freedom to provide services.
- Freedom to receive services.
- Indicative examples.

# Freedom of Establishment

.....**restrictions** on the freedom of establishment of nationals of a Member State in the territory of another Member State **shall be prohibited**.

See full article in notespage

# What does establishment mean?

- No Treaty definition.
- Court interpreted to mean that the EU national moves to another member state on a permanent or semi-permanent basis in order to work as a self-employed person exercising their trade or profession

# Establishment definition in practice

## The famous Factortame case

- Factortame, a Spanish company, owned and operated from the UK fishing boats flying the British flag and thus entitled to UK fishing quota.
- UK law changed to require a certain % of owners to be British nationals.
- Factortame did not meet the requirement and was prevented from continuing its business.
- Does EU law provide any assistance to Factortame ?

# Yes, through freedom of establishment

Court ruled they were engaged in ...actual pursuit of an economic activity through a fixed establishment for an indefinite period. Thus the nationality requirement was an obstacle to exercising this freedom.



# What economic activities come under establishment?

The treaty mentions specifically....

- setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.
- to take up and pursue activities as self-employed persons and to set up and manage undertakings,

# Freedom to provide services

## Art 56 TFEU

- restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.



# What are services?

- Services shall be considered to be 'services' within the meaning of this Treaty where they are normally provided for **remuneration....**
- If money does not change hands, then it may be a voluntary offer of a service.

# Examples of services under the Treaty

- ‘Services’ shall in particular include:
  - (a) activities of an industrial character;
  - (b) activities of a commercial character;
  - (c) activities of craftsmen;
  - (d) activities of the professions.

# Establishment or providing a service: What is the difference?

- Establishment requires permanent physical movement in another country.
- Providing a service : physical movement of the service provider may be temporary or none at all.
- Example:
  - selling insurance cross-border.
  - providing consultancy services.
  - providing professional services.

# What about this situation?

## Does EU law apply?

- Mr Cowan, a British citizen, is attacked in the Paris metro. French law entitles French victims of attacks to compensation by the state.

Mr. Cowan's claim was rejected.

# and what about this situation?

## Does EU law apply?

- Luisi & Carbone were prosecuted in the 1980s for attempting to take abroad more than the legal maximum of Italian currency .

They argued that they wished to pay for services as tourists.

# Court ruled

- *The freedom to provide services includes the freedom to go to another member state in order to receive services without being obstructed by restrictions .*

*Tourists, persons receiving medical treatment, persons travelling for the purpose of education, or business are to be regarded as recipients of services.*

Does the freedom to receive services apply here? What do you think?

Can a patient have medical costs abroad reimbursed when the operation was available in a NHS hospital?

Case C-372/04

*The Queen, on the application of Yvonne Watts v Bedford Primary Care Trust and Secretary of State for Health*



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# Providers of services posting their workers abroad

- Companies need not be owned or controlled by nationals of the host state.
- Employees may or may not be EU nationals.
- Once work permits obtained in one member state company may post its non-EU workers to provide a service to another member-state.

Consider the situation in the next slide

# Freedom to provide services: and conflict of interests

- Laval, a Latvian construction company, sent workers in Sweden to work on building sites.
- Laval and the Swedish trade unions did not reach agreement on wages and other work conditions
- Laval signed an agreement with the Latvian trade union.
- Swedish trade unions blockaded the building sites.
- Laval went bust.
- Laval sued the Swedish trade unions.

# Laval continued.... what do you think?

Did the Swedish union collective action to safeguard wage agreements constitute a restriction on the freedom to provide services?

Case C-341/05 *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet and Others*

# Professionals, providers of services and workers: not same standing.

- Workers can claim social advantages as nationals, such as housing, scholarships...
- NOT the self-employed, providers and recipients of services.
- non-discrimination principle may be relied upon to mitigate differences.

# Conclusion

The internal market is the centrepiece of the Union.

Free market ideology dominates.

Rights based on European citizenship is a departure from the dominance of rights linked to economic activity.